

Representation

Faculty representatives help to protect and defend the members' rights under the collective bargaining agreement. It is important to avoid judgment on a union member's alleged conduct. It can be a challenge but it is important that you do not let personal feelings interfere with this responsibility.

- At-Will Employment
- Just Cause / Due Process v. At-Will Employment
- Communication with MTI Professional Staff
- Duty to Fairly Represent all Dues-paying Members
 - Including Fair Share Members
 - Including Members with Performance or Disciplinary problems

Representation

○ At-Will Employment

In Wisconsin, most employment is **employment at-will**, meaning that an employee may generally be discharged **at any time for any reason**. Many employees think that if they have worked at a certain job for many years and have had no negative performance reviews, they cannot be fired. This is not true. In most cases, an employer has the right to terminate an employee for almost any reason or, in fact, for no reason at all.

○ Exceptions

The following are exceptions to at-will employment conditions

○ Discrimination

- An employee cannot be disciplined or terminated age, race, creed, color, handicap, marital status, sex, national origin, ancestry, sexual orientation, arrest record, among others

○ Breach of Contract

- Union membership and a Collective Bargaining Agreement with just cause provisions
- Employment Handbooks that specifically prohibit discipline or termination without just cause

○ State or Federal Employment Policy

- Examples include: Employees on leave under the Family and Medical Leave Act or for filing a worker's compensation claim.

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- o **Just Cause and Due Process**

- o **The Seven Tests of Just Cause**

1. Was the employee adequately warned of the probable consequences of his/her conduct?
2. Was the employer's rule or order reasonably related to the efficient and safe operation of the job function?
3. Did management investigate before administering discipline?
4. Was management's investigation fair and objective?
5. Did the investigation produce substantial evidence or proof that the employee was guilty of the offense?
6. Has the employer applied its rules, order and penalties evenly and without discrimination?
7. Was the amount of discipline reasonably related to the seriousness of the offense and the employee's past service and record? (i.e. did the punishment fit the crime?)

- o **Due Process** – Ensuring the objective treatment of an employee under scrutiny and applying the concept of 'progressive discipline.'

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- **Weingarten Rights** - 1975 Supreme Court Case *NLRB v. J. Weingarten Inc.*
 - Members have the right to have a union representative present if a meeting with an administrator could lead to disciplinary action or allegations of performance issues.
 - Advise members in your building of these rights
 - These are not like Miranda Rights: Management has no obligation to inform members and these rights must be asserted or anything gathered during a one-on-one investigation can be against the employee.
 - Printed on the back of the MTI Membership Card:

If this discussion could in any way lead to my being disciplined or terminated or cause an effect on my personal working conditions, I request that my MTI staff representative be present at this meeting.

Note: **Do not proceed** until your MTI staff representative is present.

Representation

- **Your role as a Faculty Representative may include:**
 - Gather information relevant to an issue in your building
 - If approached by a member seeking assistance regarding a possible disciplinary issue, take notes of the conversation
 - Refer to the Collective Bargaining Agreement to help determine the difference between a grievance and a complaint
 - A Grievance is a violation of the terms of the collective bargaining agreement (e.g. not providing a 30 minute duty-free lunch)
 - Complaint can be a legitimate concern that is not a violation of the CBA (e.g. administrator makes a bad decision that affects conditions of employment, payroll issues, etc.).
 - Contact MTI Professional Staff with questions or concerns